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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 Richard D. Riding,) CV 13-01622 RSWL (SPx)
12)
13 Plaintiff,) **ORDER RE: DEFENDANTS**
14 v.) **CACH LLC AND MANDARICH**
15) **LAW GROUP LLP'S MOTION**
16 Cach LLC and Mandarich Law) **TO DISMISS [24]**
17 Group LLP,)
18)
19 Defendants.)
_____)

20 Currently before the Court is Defendant Cach LLC's
21 ("Defendant Cach") and Defendant Mandarich Law Group,
22 LLP's ("Defendant Mandarich," collectively,
23 "Defendants") Motion to Dismiss [24]. The Court,
24 having reviewed all papers submitted pertaining to this
25 Motion, **NOW FINDS AND RULES AS FOLLOWS:**

26 The Court **GRANTS in part and DENIES in part**
27 Defendants' Motion to Dismiss.

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1 **I. BACKGROUND**

2 Richard D. Riding ("Plaintiff") is a senior citizen
3 whose sole income is social security benefits. First
4 Amended Complaint ("FAC") ¶ 17. Sometime before
5 February 4, 2013, Plaintiff allegedly incurred certain
6 personal financial obligations to Wells Fargo bank,
7 N.A. ("Wells Fargo"). Id. at ¶ 21. Thereafter,
8 Plaintiff allegedly fell behind in the payments owed on
9 the alleged debt. Id. at ¶ 23. Defendant Cach, a debt
10 collector, retained Defendant Mandarich to proceed with
11 legal action against Plaintiff for the collection of
12 Plaintiff's alleged financial obligations. Id. at ¶
13 24.

14 On or about February 4, 2013, Defendant Mandarich
15 sent Plaintiff a letter alleging that Plaintiff owed
16 Defendants \$20,706.68. Id. at ¶¶ 25-26. Subsequently,
17 but prior to April 11, 2013, Defendants began calling
18 Plaintiff at his home, whereby Defendants would
19 allegedly yell into the telephone, use abusive
20 language, and make accusations that Plaintiff owed
21 Defendants payments on the alleged debt of \$20,706.68.
22 Id. at ¶¶ 30-31, 35. Pursuant to the instructions of
23 Defendant Cach, Defendant Mandarich, in the name of
24 Cach, filed a state collection case against Plaintiff
25 in the Superior Court of Riverside based on Plaintiff's
26 consumer account that was allegedly in default.¹ Id. at
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28 ¹ Defendants' April 11, 2013 state lawsuit against Plaintiff

¶ 36 ("State Court Action").

On or about April 15, 2013, Defendants served Plaintiff with a summons and complaint in the State Court Action. On or about April 18, 2013, Plaintiff contacted Defendant Mandarich by telephone and spoke with a representative for Defendant Mandarich, Amanda Wells ("Ms. Wells"), to whom he explained that he never had a Wells Fargo account. Id. at ¶ 42. Ms. Wells allegedly told Plaintiff that he owed the money, that he had to pay the money to avoid being sued, and that she was going to place a lien on Plaintiff's home if he did not pay the debt. Id. at ¶¶ 43-44.

Upon providing Ms. Wells his social security number and date of birth, Ms. Wells allegedly declared that Plaintiff was the incorrect party that Defendants were suing, that he no longer needed to be concerned about the debt, and that Defendants would stop pursuing Plaintiff for the debt in the State Court Action. Id. at ¶¶ 46-47. On or about April 29, 2013, Plaintiff again spoke with Ms. Wells, who allegedly confirmed that Plaintiff was not the party that Defendants were suing. Id. at ¶¶ 50-53.

However, Defendants continued to pursue the State Court Action against Plaintiff. On June 6, 2013, Defendants mailed a letter to Plaintiff, alleging that

alleges that Plaintiff opened a Wells Fargo account, used the account, and then defaulted on said account. Id. at ¶ 37.

1 Plaintiff owed the debt in question, and that Plaintiff
2 "failed to respond" after Plaintiff was served with the
3 lawsuit. Id. at ¶¶ 64-65. However, Plaintiff alleges
4 that Defendants had specifically told him that he did
5 not need to respond, should not respond, and to return
6 the summons and complaint. Id. at ¶ 66.

7 On June 11, 2013, Defendants filed a request for
8 entry of default judgment against Plaintiff in the
9 amount of \$22,996.71 in the State Court Action. Id. at
10 ¶¶ 54-55. The state court entered default judgment
11 against Plaintiff on June 18, 2013. Request for
12 Judicial Notice ("RJN"), Ex. B. Defendants have not
13 dismissed the default. FAC ¶ 69. Based on the above,
14 Plaintiff argues that Defendant has violated the Fair
15 Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §
16 1692 et seq. - specifically pointing out violations of
17 §§ 1692d, 1692e, and 1692f. Plaintiff seeks actual and
18 statutory damages, costs of litigation and reasonable
19 attorneys' fees [8].

20 Plaintiff filed the instant Action on July 1, 2013
21 in the United States District Court for the Southern
22 District of California [1]. Plaintiff filed a FAC on
23 September 3, 2013 [8]. This Action was transferred to
24 the Central District on September 9, 2013 [12].
25 Defendants filed the instant Motion to Dismiss on
26 October 11, 2013 [24]. This matter was taken under
27 submission on November 26, 2013 [32].

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II. LEGAL STANDARD

A. Motion to Dismiss Pursuant to Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) allows a party to move for dismissal of one or more claims if the pleading fails to state a claim upon which relief can be granted. Dismissal can be based on a lack of cognizable legal theory or lack of sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). However, a party is not required to state the legal basis for its claim, only the facts underlying it. McCalden v. Cal. Library Ass'n, 955 F.2d 1214, 1223 (9th Cir. 1990), cert. denied, 112 S. Ct. 2306 (1992). In a Rule 12(b)(6) motion to dismiss, a court must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the non-moving party. Klarfeld v. United States, 944 F.2d 583, 585 (9th Cir. 1991).

The question presented by a motion to dismiss is not whether the plaintiff will prevail in the action, but whether the plaintiff is entitled to offer evidence in support of its claim. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 583 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements

1 will not do." Id. at 555 (internal citation omitted).
2 Although specific facts are not necessary if the
3 complaint gives the defendant fair notice of the claim
4 and the grounds upon which the claim rests, a complaint
5 must nevertheless "contain sufficient factual matter,
6 accepted as true, to state a claim to relief that is
7 plausible on its face." Ashcroft v. Iqbal, 556 U.S.
8 662, 678 (2009) (internal quotation marks omitted).

9 If dismissed, a court must then decide whether to
10 grant leave to amend. The Ninth Circuit has repeatedly
11 held that a district court should grant leave to amend
12 even if no request to amend the pleadings was made,
13 unless the court determines that the pleading could not
14 possibly be cured by the allegation of other facts.
15 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).
16 The court has discretion to deny leave to amend where
17 deficiencies cannot be cured. Keniston v. Roberts, 717
18 F.2d 1295, 1300 (9th Cir. 1983).

19 **B. Motion to Dismiss Pursuant to Rule 12(b)(1)**

20 Federal Rule of Civil Procedure 12(b)(1) authorizes
21 a court to dismiss claims over which it lacks proper
22 subject matter jurisdiction. A court is free to
23 determine jurisdiction on a motion to dismiss for lack
24 of jurisdiction under Rule 12(b)(1) "unless the
25 jurisdictional issue is inextricable from the merits of
26 a case." Kingman Reef Atoll Invs., L.L.C. v. United
27 States, 541 F.3d 1189, 1195 (9th Cir. 2008) (citing
28 Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir.

1 1987)).

2 "[U]nlike a Rule 12(b)(6) motion, in a Rule
3 12(b)(1) motion, the district court is not confined to
4 the four corners of the complaint -- it may consider
5 facts and need not assume the truthfulness of the
6 complaint[,] and the existence of disputed material
7 facts will not preclude the court from evaluating the
8 existence of subject matter jurisdiction.

9 Americopters, LLC v. Fed. Aviation Admin., 441 F.3d
10 726, 732 n.4 (9th Cir. 2006); see also Ass'n of Am.
11 Med. Colls. v. United States, 217 F.3d 770, 778 (9th
12 Cir. 2000). The moving party "should prevail [on a
13 motion to dismiss] only if the material jurisdictional
14 facts are not in dispute and the moving party is
15 entitled to prevail as a matter of law." Casumpang v.
16 Int'l Longshoremen's & Warehousemen's Union, 269 F.3d
17 1042, 1060-61 (9th Cir. 2001) (internal citations
18 omitted); Tosco Corp. v. Cmty. for a Better Env't, 236
19 F.3d 495, 499 (9th Cir. 2001), overruled on other
20 grounds by, Hertz Corp. v. Friend, 559 U.S. 77 (2010).

21 **III. ANALYSIS**

22 **A. Defendants' Request for Judicial Notice**

23 Defendants request that this Court take judicial
24 notice of (1) a copy of the summons and complaint dated
25 April 11, 2013 in the State Court Action, and (2) a
26 copy of the judgment dated June 18, 2013 in the State
27 Court Action. See RJN.

28 Under Federal Rule of Evidence 201, a court may

1 take judicial notice of "matters of public record."
2 Lee v. City of L.A., 250 F.3d 668, 689 (9th Cir. 2001).
3 Further, a trial court must take judicial notice of
4 facts "if requested by a party and supplied with the
5 necessary information." Fed. R. Evid. 201(d). A fact
6 is appropriate for judicial notice only if it is not
7 subject to reasonable dispute in that it is (1)
8 generally known within the territorial jurisdiction of
9 the trial court or (2) capable of accurate and ready
10 determination by resort to sources whose accuracy
11 cannot reasonably be questioned. Fed. R. Evid. 201(b).

12 As Defendants have provided the Court with the
13 necessary information regarding these documents and
14 because these documents are not subject to reasonable
15 dispute and are capable of accurate and ready
16 determination by resort to sources whose accuracy
17 cannot reasonably be questioned, this Court **GRANTS**
18 Defendants' request for judicial notice.

19 **B. Defendants' Motion to Dismiss**

20 1. Rooker-Feldman Doctrine

21 The Rooker-Feldman doctrine is a well-established
22 jurisdictional rule that prevents federal courts from
23 second-guessing state court decisions by barring the
24 lower federal courts from hearing de facto appeals from
25 state-court judgments. Reusser v. Wachovia Bank, N.A.,
26 525 F.3d 855, 858-59 (9th Cir. 2008). A challenge
27 under the Rooker-Feldman doctrine is a challenge for
28 lack of subject-matter jurisdiction and may be raised

1 at any time by either party or sua sponte by the court.
2 Fleming v. Gordon & Wong Law Group, P.C., 723 F. Supp.
3 2d 1219, 1222 (N.D. Cal. 2010) (citing Olson Farms,
4 Inc. v. Barbosa, 134 F.3d 933, 937 (9th Cir. 1998)).

5 While the clearest case for dismissal based on the
6 Rooker-Feldman doctrine occurs when a federal plaintiff
7 asserts as a legal wrong an allegedly erroneous
8 decision by a state court, and seeks relief from a
9 state court judgment based on that decision, (Reusser,
10 525 F.3d at 859 (citing Henrichs v. Valley View Dev.,
11 474 F.3d 609, 613 (9th Cir. 2007) (internal quotation
12 marks omitted)), the Rooker-Feldman may also apply
13 where the parties do not directly contest the merits of
14 a state court decision. Id. (citing Kougasian v. TMSL,
15 Inc., 359 F.3d 1136, 1139 (9th Cir. 2004)). Rather,
16 the doctrine also "prohibits a federal district court
17 from exercising subject matter jurisdiction over a suit
18 that is a de facto appeal from a state court judgment."
19 Id.

20 A federal action constitutes such a de facto appeal
21 where "claims raised in the federal court action are
22 'inextricably intertwined' with the state court's
23 decision such that the adjudication of the federal
24 claims would undercut the state ruling or require the
25 district court to interpret the application of state
26 laws or procedural rules." Id. (citing Bianchi, 334
27 F.3d at 898). In such circumstances, "the district
28 court is in essence being called upon to review the

1 state court decision." Id. (citing Feldman, 460 U.S.
2 at 483 n.16); see also Doe & Assoc. v. Napolitano, 252
3 F.3d 1026, 1030 (9th Cir. 2001) ("Where the district
4 court must hold that the state court was wrong in order
5 to find in favor of the plaintiff, the issues presented
6 to both courts are inextricably intertwined.")).
7 Further, in analyzing the Rooker-Feldman doctrine, the
8 Court "cannot simply compare the issues involved in the
9 state-court proceeding to those raised in the federal-
10 court plaintiff's complaint." Dexter v. Tran, 654 F.
11 Supp. 2d 1253, 1259 (D. Wash. 2009) (citing Bianchi,
12 334 F.3d at 900). Rather, the district court must pay
13 close attention to the relief sought by the federal-
14 court plaintiff. Id.

15 Thus, Rooker-Feldman "applies only when the federal
16 plaintiff both asserts as her injury legal error or
17 errors by the state court and seeks as her remedy
18 relief from the state court judgment." Vacation
19 Village, Inc. v. Clark County, Nev., 497 F.3d 902, 910
20 (9th Cir. 2007) (citing Kougasian v. TMSL, Inc., 359
21 F.3d 1136, 1140 (9th Cir. 2004)).

22 In Williams v. Cavalry Portfolios Servs., LLC, a
23 defendant filed a debt collection lawsuit against a
24 plaintiff in state superior court. No. SACV 10-00255
25 JVS(ANx), 2010 WL 2889656, at *1 (C.D. Cal. July 20,
26 2010). Because the plaintiff failed to respond, the
27 state court entered default judgment against him, which
28 the plaintiff never moved to set aside. Id.

1 Thereafter, the plaintiff filed an action in federal
2 court, alleging that defendant violated § 1692e(5), §
3 1692e(2)(A), § 1692e(8), and § 1692f of the FDCPA by
4 "seeking a judgment against Plaintiff through a lawsuit
5 which she had never been served with," and by
6 "attempting to collect a debt from Plaintiff that was
7 not his, despite proof that his identity had been
8 stolen." Id. at *2-*3. The court determined the
9 claims were barred by the Rooker-Feldman doctrine,
10 because "[b]y way of default judgment, the state court
11 found that Plaintiff . . . is liable for the debt" and
12 was a losing party in state court. Id. at *3-*4. The
13 court held that in order to prevail on his FDCPA
14 claims, the plaintiff must prove that he was not liable
15 for the debt, but that such a finding would undermine
16 the state court default judgment. Id. at *4. Thus,
17 the court found that plaintiff's claims were barred by
18 Rooker-Feldman. Id. However, the court acknowledged
19 that claims which challenge the method in which
20 defendants attempt to collect a debt are immune from
21 Rooker-Feldman. Id. at *5.

22 In Dexter, a money judgment was entered against the
23 plaintiff in state court, and the plaintiff sought
24 statutory damages in federal court for defendant's
25 conduct in bringing the state court lawsuit. 654 F.
26 Supp. 2d at 1260. The court noted that the plaintiff
27 was not asserting as his injury legal errors by the
28 state court and was not seeking relief from the state

1 court judgment. Id. Thus, the court held that the
2 Rooker-Feldman Doctrine did not preclude plaintiff's
3 claims in federal court. Id.

4 Here, Plaintiff alleges that Defendants violated
5 several provisions of the FDCPA. Specifically, he
6 argues that:

- 7 • 1) Defendants sent Plaintiff a letter alleging that
8 he owed them \$20,706.68 when the debt did not
9 belong to him, in violation § 1692e, § 1692e(10),
10 and § 1692f(1) (FAC ¶¶ 27-29);
- 11 • 2) Defendants would call Plaintiff and demand
12 payment using abusive language, in violation of §
13 1692d and § 1692d(2) (Id. at ¶¶ 31-33);
- 14 • 3) Defendants failed to provide Plaintiff the
15 notice required by § 1692e(11) (Id. at ¶ 35);
- 16 • 4) Defendant told Plaintiff that he owed the money
17 and had to pay the debt to prevent from being sued,
18 in violation of § 1692e and § 1692f(1) (Id. at ¶¶
19 41-43);
- 20 • 5) Defendants threatened to place a lien on
21 Plaintiff's home if he did not pay the debt, in
22 violation of § 1692e(5) (Id. at ¶¶ 44-45);
- 23 • 6) Defendants filed a request for entry of default
24 judgment against Plaintiff in the amount of
25 \$22,996.71, in violation of § 1692f(1), § 1692e(5)
26 and § 1692e(10) (Id. at ¶¶ 55-58);
- 27 • 7) Defendants told Plaintiff he did not need to
28 respond to the lawsuit filed in the state court, in

1 violation of § 1692e(10) (Id. at ¶¶ 65-67); and
2 • 8) Defendants stated in a February collection
3 letter that Plaintiff owed \$20,706.68 when they
4 later demanded only \$20,427.13 in the state lawsuit
5 in violation of 1692f(1) (FAC ¶¶ 38, 60).

6 The Court notes that Plaintiff provides different
7 grounds as the basis for his FDCPA claims.
8 Specifically, Plaintiff's FDCPA §§ 1692d, 1692e, and
9 1692f claims are based on (1) Defendants' pursuit of
10 payment for a debt incurred by Plaintiff, which
11 Plaintiff maintains he never incurred, and (2)
12 Defendants' alleged use of improper collection methods
13 to collect that debt. As to the first ground -
14 Plaintiff alleges that Defendants violated §§ 1692e,
15 1692e(10), and 1692f(1) when they demanded that
16 Plaintiff pay \$20,706.68 for a debt that Plaintiff
17 never incurred. See FAC ¶¶ 27-29. However, the state
18 court, by issuing a default judgment against Plaintiff,
19 already determined that Plaintiff was liable for that
20 debt. See Williams, 2010 WL 2889656, at *3. If this
21 Court were to hold otherwise, it would undercut the
22 state court ruling. See id. Thus, to the extent that
23 Plaintiff's FDCPA claims are premised on the
24 proposition that Plaintiff is not liable for the debt,
25 the Court finds that those claims are barred by the
26 Rooker-Feldman Doctrine. See id.

27 However, to the extent that Plaintiff's §§ 1692d,
28 1692e, and 1692f claims are premised on the proposition

1 that Defendants employed improper collection methods,
2 the Court finds that those claims are *not* barred by the
3 Rooker-Feldman Doctrine. See Lange v. CIR Law Offices,
4 Civil No. 09cv1485-CAB, 2010 WL 2524089, at *2, f.1
5 (S.D. Cal. June 10, 2010) (finding no jurisdictional
6 bar under the Rooker-Feldman Doctrine to a plaintiff's
7 FDCPA claim because the plaintiff only sought
8 determination that the method of collection engaged in
9 by defendant was unfair). Specifically, Plaintiff
10 alleges that Defendants (1) called Plaintiff and
11 demanded payment using abusive language (in violation
12 of § 1692d(2)), (2) told Plaintiff that he did not need
13 to respond to the lawsuit filed in the state court (in
14 violation of § 1692e(10)), (3) failed to provide notice
15 of the debt (in violation of § 1692e(11)), and (4)
16 stated in a February collection letter that Plaintiff
17 owed \$20,706.68 when they later demanded only
18 \$20,427.13 in the state lawsuit (in violation of §
19 1692f(1)).

20 A plaintiff may successfully assert FDCPA claims
21 even if found liable for a debt. Williams, 2010 WL
22 2889656, at *4. Here, Plaintiff seeks a determination
23 that the method of collection engaged in by Defendants
24 was unfair. Under these circumstances, the Court finds
25 no jurisdictional bar to considering Plaintiff's
26 claims. See Lange, 2010 WL 2524089, at *2, f.1.

27 Further, Plaintiff does not seek to set aside the
28 state court judgment in his prayer for relief. Rather,

1 Plaintiff seeks an award of actual and statutory
2 damages, along with costs of litigation and reasonable
3 attorneys fees. Moreover, Plaintiff does not assert as
4 his injury any specific legal errors by the state court
5 and is not seeking relief from the state court
6 judgment. Because Plaintiff is not seeking to overturn
7 the money judgment that was entered against him in
8 state court and does not assert that any legal errors
9 by the state court caused him injury, the Rooker-
10 Feldman Doctrine does not preclude Plaintiff's claims
11 premised on Defendants' alleged improper collection
12 methods. See Dexter, 654 F. Supp. 2d at 1260.

13 Accordingly, the Court finds that Plaintiff's FDCPA
14 claims based on Defendants' improper collection
15 methods, pursuant to §§ 1692d, 1692d(2), 1692e(10),
16 1692e(11) and § 1692f(1) are not barred by the Rooker-
17 Feldman Doctrine.

18 2. Plaintiff's § 1692(d) and § 1692(d)(2) claims

19 Section 1692d proscribes debt collectors from
20 engaging "in conduct the natural consequence of which
21 is to harass, oppress, or abuse any person [.]" 15
22 U.S.C. § 1692d; Skinner v. Green Tree Servicing LLC,
23 No. 3:12-cv-03834-JCS, 2012 WL 6554530, at *6 (N.D.
24 Cal. Dec. 14, 2012). Section 1692d contains a
25 nonexhaustive list of specific conduct which
26 constitutes a violation of the section, such as the
27 "use of obscene or profane language or language the
28 natural consequence of which is to abuse the hearer or

1 reader." Id. (citing 15 U.S.C. § 1692d(2)).

2 A pleading that offers "labels and conclusions" or
3 "a formulaic recitation of the elements of a cause of
4 action will not do." Ashcroft v. Iqbal, 556 U.S. 662,
5 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550
6 U.S. 544, 555 (2007)). Nor does a complaint suffice if
7 it tenders "naked assertion[s]" devoid of "further
8 factual enhancement." Id. (citing Twombly, 550 U.S. at
9 557).

10 Here, the Court finds that the allegations in the
11 Complaint fail to support Plaintiff's § 1692d(2) claim.
12 Rather, the allegations appear to constitute a mere
13 "formulaic recitation of the elements of a cause of
14 action," and is insufficient to state a claim for
15 relief. See Twombly, 550 U.S. at 555. Specifically,
16 Plaintiff makes conclusory statements that in each of
17 Defendants' telephone calls, Defendants would "yell
18 into the telephone accusations that Plaintiff owed
19 Defendants payment on the alleged debt, and used
20 abusive language, the natural consequence of which was
21 to abuse." FAC ¶¶ 30-32. Such naked assertions,
22 devoid of "further factual enhancement," are
23 insufficient to state a claim under § 1692d(2).
24 Accordingly, the Court **GRANTS** Defendant's Motion to
25 Dismiss Plaintiff's § 1692d claims.

26 The Ninth Circuit has repeatedly held that a
27 district court should grant leave to amend even if no
28 request to amend the pleadings was made, unless the

1 court determines that the pleading could not possibly
2 be cured by the allegation of other facts. Lopez v.
3 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). Because it
4 appears that the pleadings could be cured by the
5 allegation of other facts, the Court **GRANTS** Defendants'
6 Motion to Dismiss Plaintiff's § 1692d claims with leave
7 to amend.

8 3. Plaintiff's § 1692e(5) claim

9 Section 1692e(5) proscribes a debt collector from
10 threatening to take any action that cannot legally be
11 taken or that is not intended to be taken. 15 U.S.C. §
12 1692e(5). Plaintiff alleges that Defendants violated §
13 1692e(5) by (1) filing a request for entry of default
14 judgment against Plaintiff in the State Court Action
15 (FAC ¶¶ 55, 57) and (2) threatening to place a lien on
16 Plaintiff's home if he did not pay the debt. Id. at ¶¶
17 44-45. Based on the Complaint, it appears that
18 Plaintiff's § 1692e(5) cause of action is premised on
19 Plaintiff's contention that he never owed the debt to
20 begin with. See id. at ¶¶ 42-45. However, to make a
21 finding that Plaintiff never owed the debt would
22 undermine the state court judgment because the state
23 court held that Plaintiff was liable for the debt. See
24 Williams, 2010 WL 2889656, at *3. As discussed above,
25 the Rooker-Feldman Doctrine prevents this Court from
26 exercising subject matter jurisdiction over claims
27 which would require the Court to undermine the state
28 court judgment. See id. As such, the Court finds that

1 Plaintiff's § 1692e(5) claim is barred by the Rooker-
2 Feldman doctrine and **GRANTS** Defendant's Motion to
3 Dismiss this claim. Further, because the Court finds
4 that it has no subject matter jurisdiction over
5 Plaintiff's § 1692e(5) claim, the Court **GRANTS**
6 Defendant's Motion to Dismiss this claim without leave
7 to amend.

8 4. Plaintiff's § 1692e(10) claim

9 Under 15 U.S.C. § 1692e(10), the "use of any false
10 representation or deceptive means to collect or attempt
11 to collect any debt" from a consumer is prohibited.
12 Kachlic v. Bursey & Associates, P.C., No.
13 CV-12-1111-PHX-JAT, 2013 WL 820375, at *4 (D. Ariz.
14 Mar. 5, 2013). The standard for determining whether a
15 communication is deceptive or misleading under §
16 1692e(10) is whether the "least sophisticated consumer"
17 could have been deceived or misled. Isham v. Gurstel,
18 Staloch & Chargo, P.A., 738 F. Supp. 2d 986, 995 (D.
19 Arizona 2010) (citing Wade v. Reg'l Credit Ass'n, 87
20 F.3d 1098, 1100 (9th Cir. 1996)). To answer this
21 inquiry, the Ninth Circuit adopted a "materiality"
22 approach, meaning that "false but nonmaterial
23 representations are not likely to mislead the least
24 sophisticated consumer and therefore are not actionable
25 under §§ 1692e or 1692f." Id. (citing Donohue, 592
26 F.3d at 1033). In other words, the alleged falsity of
27 a statement must actually distort the consumer's
28

1 perception, not a minor technical glitch that even the
2 least sophisticated consumer could understand. Id.

3 Here, Plaintiff alleges that Defendants violated §
4 1692e(10) by telling Plaintiff he did not need to
5 respond to the state court lawsuit. Specifically,
6 Plaintiff alleges that Defendants told him that he no
7 longer needed to be concerned about the debt and that
8 they would stop pursuing Plaintiff for the debt. FAC ¶
9 48. Thereafter, Plaintiff alleges that he promptly
10 returned the summons to Defendant Mandarich's office.
11 Id. at ¶ 49. Plaintiff asserts that he again contacted
12 Defendant Mandarich, and Ms. Wells assured him that he
13 was not the party that Defendants were suing, and that
14 Plaintiff's address would be removed from Defendants'
15 file. Id. at ¶ 53. Thus, Plaintiff alleges that
16 Defendants had specifically told him that he did not
17 need to respond, should not respond, and to return the
18 summons and complaint. Id. at ¶ 66.

19 On June 6, 2013, Defendants sent Plaintiff a letter
20 and alleged that he owed the debt and that he failed to
21 respond after Plaintiff was served with the lawsuit.
22 FAC ¶ 64-65. On June 11, 2013, Defendants filed a
23 request for entry of default judgment against Plaintiff
24 in the State Court Action. FAC ¶ 55. However, based
25 on the allegations in the FAC, it appears that
26 Plaintiff believed he did not need to take any action
27 in the State Court Action because he was repeatedly
28 assured by Defendants that he did not need to respond

1 to the lawsuit. Further, the allegations in the FAC
2 support a finding that the "least sophisticated
3 consumer" could have been deceived or misled from
4 Defendants' statements indicating that Plaintiff did
5 not need to respond to the lawsuit because they
6 contacted the wrong person. Plaintiff provides
7 sufficient facts to suggest that Defendants may have
8 used false or deceptive means to collect a debt by
9 telling Plaintiff he did not need to respond to the
10 lawsuit, and then subsequently requesting entry of
11 default in the State Court Action after Plaintiff
12 failed to respond. Thus, taking all allegations in the
13 FAC as true, and drawing all reasonable inferences in
14 favor of the non-moving party, the Court finds that
15 Plaintiff has successfully stated facts to support a
16 claim for violation of § 1692e(10) and **DENIES**
17 Defendant's Motion to Dismiss this claim.

18 5. Plaintiff's § 1692e(11) claim

19 In the initial written or oral communication with a
20 debtor, § 1692e(11) requires the debt collector to
21 include a statement that it "is attempting to collect a
22 debt and that any information obtained will be used for
23 that purpose." 15 U.S.C. § 1692e(11). Subsection
24 1692e(11) also requires that, in any "subsequent
25 communication," the debt collector must disclose "that
26 the communication is from a debt collector." Id.

27 Here, Plaintiff argues that Defendants called him
28 several times, claiming that Plaintiff owed them

1 \$20,706.68, but that Defendants failed to provide
2 Plaintiff notice required by § 1692e(11). FAC ¶ 35.
3 Such notice requires that Defendants disclose that they
4 were debt collectors, that they are attempting to
5 collect a debt, and that any information obtained will
6 be used for that purpose. Hosseinzadeh v. M.R.S.
7 Associates, Inc., 387 F. Supp. 2d 1104, 1116 (C.D. Cal.
8 2005) and 15 U.S.C. § 1692e(11). The Court notes that
9 Defendants do not specifically address Plaintiff's §
10 1692e(11) claim, nor do they argue that any such notice
11 was given. Thus, taking all allegations in the FAC as
12 true, and drawing all reasonable inferences in favor of
13 the non-moving party, the Court finds that Plaintiff
14 has sufficiently stated a claim of violation of §
15 1692e(11). As such, the Court **DENIES** Defendants'
16 Motion to Dismiss as to Plaintiff's § 1692e(11) claim.

17 6. Plaintiff's § 1692f(1) claim

18 Section 1692f prohibits a debt collector from using
19 "unfair or unconscionable means to collect or attempt
20 to collect any debt," which includes "[t]he collection
21 of any amount (including any interest, fee, charge, or
22 expense incidental to the principal obligation) unless
23 such amount is expressly authorized by the agreement
24 creating the debt or permitted by law." 15 U.S.C. §
25 1692f(1); Durham v. Cont'l Cent. Credit, No. 07cv1763
26 BTM(WMc), 2009 WL 3416114, at *2 (S.D. Cal. Oct. 20,
27 2009). Under § 1692f(1), where parties have not
28 expressly agreed on charges to be collected with

1 respect to a debt, state law determines whether
2 additional charges are permitted. Palmer v. Stassinios,
3 348 F. Supp. 2d 1070, 1076 (N.D. Cal. 2004).

4 Here, Plaintiff claims that Defendants stated in a
5 February collection letter that Plaintiff owed
6 \$20,706.68 when they later demanded only \$20,427.13 in
7 the State Court Action in violation of § 1692f(1). FAC
8 ¶¶ 26, 38, 60. However, Plaintiff does not point to a
9 specific interest, fee, charge, or expense incidental
10 to the principal obligation that Defendants improperly
11 sought to collect. Further, Plaintiff does not state
12 how Defendants' alleged request for \$20,706.68 was more
13 than what Plaintiff actually owed. Thus, it is unclear
14 to the Court how Defendants had violated § 1692f(1).
15 As such, the Court **GRANTS** Defendants' Motion to Dismiss
16 with leave to amend.

17 **IV. CONCLUSION**

18 Based on the foregoing, the Court **GRANTS in part**
19 **and DENIES in part** Defendants' Motion to Dismiss as
20 follows:

- 21 • The Court **GRANTS** Defendants' Motion as to
22 Plaintiff's § 1692d and § 1692d(2) claims with
23 twenty days leave to amend.
- 24 • The Court **GRANTS** Defendants' Motion to Dismiss
25 Plaintiff's § 1692e(5) claim without leave to
26 amend.
- 27 • The Court **DENIES** Defendants' Motion to Dismiss
28 Plaintiff's 1692e(10) claim.

- 1 • The Court **DENIES** Defendants' Motion to Dismiss
- 2 Plaintiff's 1692e(11) claim.
- 3 • The Court **GRANTS** Defendants' Motion to Dismiss
- 4 Plaintiff's § 1692f(1) claim with twenty days leave
- 5 to amend.

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8 **IT IS SO ORDERED.**

9 DATED: January 17, 2014

10

11 RONALD S.W. LEW

12 **HONORABLE RONALD S.W. LEW**

13 Senior, U.S. District Court Judge

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